

FAX TRANSMITTAL

of pages 2



Nez Perce

To	MARY LOU SOSCIA	From	JIM RUFF
Dep./Agency	LET'S FIGURE OUT	Phone #	HOW BEST TO RESPOND
Fax #	TO THIS LTR. WHAT	Fax #	ABOUT THE CORPS?
NSN 7540-01-317-7008		5099-101 GENERAL SERVICES ADMINISTRATION	

TRIBAL EXECUTIVE COMMITTEE

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January 26, 2001

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U.S. Army Corps of Engineers
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Re: Nez Perce Tribe's Continued Concerns Regarding the Final 2000 Biological Opinion's Treatment of Water Quality

The Nez Perce Tribe is extremely disappointed to find that the final 2000 Biological Opinion for the operation of the Federal Columbia River Power System contains the same flaws the Tribe identified in the draft Biological Opinion regarding the United States' ongoing failure to comply with the Clean Water Act.

In commenting on the draft Biological Opinion, the Nez Perce Tribe specifically noted:

The draft salmon plans [the draft BiOp and "All-H Paper"] treat the federally-approved water quality standards for temperature and dissolved gas standards as "long-term goals" rather than standards which the Corps is legally obligated to comply with. The draft water quality "plan" is not a plan that will result in compliance with temperature and dissolved gas standards; it is a plan to develop a

plan to "address" water quality standards at some unspecified time in the future through some indeterminate means. The draft salmon plans contain no substantive detail, no implementation time frame, and no deadline for the achievement of water quality compliance.

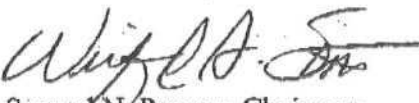
See Nez Perce Tribe's concerns with NMFS' Draft Biological Opinion on the Federal Columbia River Power System and the United States' "All H Paper," October 19, 2000, at 10 (copy attached). The Tribe also called for the United States to spend its valuable time, money, and resources on implementing measures necessary to improve water quality, rather than simply studying and monitoring these water quality problems, and creating more processes, and subverting Clean Water Act issues to an Endangered Species Act forum. Id. The Corps itself has recognized the inappropriateness of addressing Clean Water Act issues in an Endangered Species Act forum.¹

The final 2000 Federal Columbia River Power System Biological Opinion does not correct any of the flaws the Tribe identified. See Sections 9.6.1.7, 9.6.5, and Appendix B. Appendix B's Tables B-2 and B-3 and the "actions" described in the reasonable and prudent alternatives section provide only for more "plans," "studies," "modelling," or "monitoring" rather than the implementation of measures and modifications of operations to achieve compliance with applicable water quality standards.

The Nez Perce Tribe has been vigilant in urging the United States, in all forums, to implement actions to improve water quality rather than simply studying and monitoring the situation. See, e.g., Nez Perce Tribe's December 4, 2000 letter to National Marine Fisheries Service and Environmental Protection Agency (copy attached). We believe the United States District Court has already provided clear direction to the United States regarding the Corps' legal obligations to comply with federally-approved water quality standards in National Wildlife Federation v. Corps of Engineers.

We appreciate this opportunity to share our views with you on these issues of great importance to the Nez Perce Tribe.

Sincerely yours,


6 Samuel N. Penney, Chairman

¹ The Corps of Engineers has expressed concerns that Clean Water Act issues should not be addressed in Endangered Species Act and Biological Opinion processes. "Dick Cassidy provided the Corps' opinion...the Corps feels it would be more appropriate for another forum, outside the NMFS Regional Forum, to play that broader, policy-level regional role in the water quality arena, Cassidy said." *Meeting Notes, Implementation of the Biological Opinion: What is the Future of Water Quality Team?*, December 5, 2000, available at: <http://www.nwd-wc.usace.army.mil/TMT/2000/WQ/minutes/1205.htm>